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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Implementation of Section 26 of the Cable Television  
Consumer Protection and Competition Act of 1992  
Inquiry into Sports Programming Migration  
PP Docket No. 93-21

Dear Ms. Searcy:

April 9, 1993

Enclosed for filing, on behalf of CBS Inc., are an  
original and nine (9) copies of Reply Comments of CBS Inc.  
in the above-referenced matter.

Please address communications concerning this matter to  
the undersigned.

Very truly yours,

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 26 of the	)	PP Docket No. <u>93-21</u>
Cable Television Consumer Protection	)	
and Competition Act of 1992	)	
	)	
Inquiry into Sports Programming	)	
Migration	)	

REPLY COMMENTS OF CBS INC.

Howard F. Jaeckel  
Richard H. Altabef  
51 West 52 Street  
New York, NY 10019

Its Attorneys

April 9, 1993

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### SUMMARY

CBS shares with several commenters the belief that there is great merit in Congress' conclusion that the subject of "migration" of sports programming from broadcast to cable bears careful monitoring. At stake is whether, in the words of Congressman Ed Markey, "we...turn America into a society of sports haves and have nots."

As their comments make apparent, the maior sports leagues

three distinct ways. First, cable networks bid against broadcasters for sports rights, supported by their dual stream of advertiser revenues and subscriber revenues. Second, whether particular sports programming on cable has migrated from broadcast television or is additive, it nonetheless offers the viewer abundant alternatives to broadcast coverage, thus inevitably diminishing the size of broadcast sports audiences. Thirdly, cable sports programming vastly increases the inventory of advertising availabilities in sports programming. The net effect is an ongoing diminution in the capacity of broadcasters to bid for sports rights against cable networks, which are inhibited only by political considerations from more vigorously pursuing national, as well as local, events.

The proliferation of sports on cable may, in the short run, represent an increase in choices for the consumer. But if that has the effect over time of jeopardizing sports on broadcast television, the impact upon most consumers will be very negative.

Fundamental regulatory reforms would permit broadcasters to resist sports programming migration more effectively.

The most important handicap that has been imposed by law on broadcasting may soon be lifted by full implementation of the provisions of the Cable Television Consumer

Protection and Competition Act of 1992 relating to retransmission consent. There is little doubt that cable subscribers place a great value on the programming they receive through broadcast retransmission. If broadcast television stations succeed in capturing a share of cable revenues that bears some reasonable relationship to the value of their signal's contribution to the menu of cable offerings, then retransmission consent fees will eventually constitute an important second revenue stream for stations. But there remains a body of regulation that impedes the ability of broadcast stations and networks to realize their full competitive potential, with direct impact on the economic wherewithal that broadcasters can bring to the sports rights auction market.

Even if all unnecessary regulatory impediments to broadcasting were removed, the economic might of subscriber-supported cable would threaten to overwhelm broadcasting's ability to remain in the sports business. In the end, it is the leagues' commitment to the public interest that has allowed broadcasting, even before retransmission consent and other possible regulatory relief, to continue to offer a very substantial schedule of the best sports events.

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REPLY COMMENTS OF CBS INC.

CBS Inc. ("CBS") respectfully submits these reply comments for consideration by the Federal Communications Commission ("FCC" or "Commission") pursuant to a Notice of Inquiry released February 9, 1993, requesting information relating to the Commission's inquiry into sports programming migration (the "Notice").

CBS shares with other commenters the belief that there is great merit in Congress' conclusion that the subject of "migration" of sports programming from broadcast to cable bears careful monitoring. At stake is whether, in the words of Congressman Ed Markey, "we...turn America into a society of sports haves and have nots."<sup>1/</sup> There is more than a consumer interest to be vindicated here, though

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<sup>1/</sup> "House Grills Sports Commissioners on Cable Migration," Broadcasting, May 14, 1990, p. 33.

that consumer interest is a substantial one. Common access to major sports events constitutes an important part of our shared national culture. As Congressman Markey observed of sports programming, "The social fabric is largely knit by our common experiences."<sup>2/</sup>

Representatives of the cable industry have at times argued that the movement of major sports events from broadcast television to cable should be viewed as acceptable and sound if that is what the marketplace decrees.<sup>3/</sup> We question that premise. We urge, however, that the migration that has already occurred, and the migration that may occur in the near future, have not been decreed

As the only full-service national broadcast television network that does not own a national cable sports service, CBS is uniquely committed to preserving coverage of major sports events on free television. As their comments in this proceeding indicate, the major sports leagues and conferences share that commitment and recognize the vital

sports appears on cable, coverage of the most significant sports events remains on broadcast network television.<sup>4/</sup>

The data provided by commenters also indicates that among local television markets, there is considerable variation

~~in the amount of sports coverage provided by local television stations.~~

50 of these games are scheduled to be broadcast, all during time purchased by MSG on WPIX-TV.<sup>5/</sup> Indeed, there is some doubt as to whether WPIX-TV will continue in future seasons to carry any Yankee games at all on the terms available to it.<sup>6/</sup> Of 150 Mets games scheduled to be televised locally in the 1993 regular baseball season, only 75 will be available on free television.<sup>7/</sup> In sum, of the major professional sports, only New York's two NFL teams, the Giants and the Jets, continue to be carried solely on broadcast television.

While the commenters in this proceeding have largely focused on quantifying the extent of migration that has occurred, the impact of migration in those local markets where it has occurred -- particularly the impact on a fan of limited means -- should not be underestimated. If the

rights to that team's games,<sup>9/</sup> then he will not be able to gain access to those "migrated" games at any price.

And after deregulation, the price to the consumer for cable service escalated steadily throughout the United

page 12/ Moreover, legal teams have experimented with

Conditions exist that could ultimately jeopardize the economic viability of major sports coverage on broadcast television.

It is certainly true, as cable industry representatives assert, that some of the sports programming for which fans are now required to pay is coverage that was not previously available on broadcast television (although it is hard to imagine that much of this coverage would not be offered on broadcast television if rights could be obtained at a cost-effective price). But John Severino, former chief executive of Prime Ticket cable network, believes, in the words of Adweek's Marketing Week, "that sports will steadily market more of their big draw events on PPV...starting with pivotal in-season games, moving to the playoffs, and perhaps even to the World Series and Super Bowl."<sup>14/</sup> Similar predictions abound.<sup>15/</sup>

The economic forces underlying these forecasts are clear. Cable impacts upon free televised sports in three distinct ways. First, cable networks bid against broadcasters for

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<sup>14/</sup> Grimm, Matthew, "Watching the Game on Pay-Per-View," Adweek, March 4, 1991, p. 41.

<sup>15/</sup> See, e.g., the predictions of Prof. Roger Noll of Stanford University, reported by Howard Schlossberg in "Like Your Ballgames on TV? Get Ready to Pay for Them," Marketing News, vol. 26, p. 14, April 13, 1992; see also "Warming Up for 1996 Summer Olympics, Atlanta Finds Field of Financial Hurdles," Wall Street Journal, January 29, 1993, p. 8.

sports rights, supported by their dual stream of advertiser revenues and subscriber revenues. And because of the importance that consumers place on gaining access to the televised games of their favorite teams, the cable networks have had no difficulty in swelling their subscriber revenues by raising prices.<sup>16/</sup> The effect, of course, has been to drive rights fees up sharply.

Second, whether particular sports programming on cable has migrated from broadcast television or is additive, it nonetheless offers the viewer abundant alternatives to broadcast coverage, thus inevitably diminishing the size of broadcast sports audiences.<sup>17/</sup> Thirdly, cable sports programming vastly increases the inventory of advertising availabilities in sports programming.<sup>18/</sup> Since

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<sup>16/</sup> See, e.g., "ESPN Sets NFL Surcharge: 14 cents, rising to 17 cents," *Broadcasting*, March 12, 1990, p. 29. See, also, "ESPN Tries To Stem Baseball Losses," *Multichannel News*, April 6, 1992, p. 13.

<sup>17/</sup> See, e.g., "Watching the Game on Pay-Per-View," *Adweek's Marketing Week*, March 4, 1991, p. 41; "Viewers Tuning Out National Pasttime," *The Sporting News*, May 27, 1991, p. 43; "Syndicator Gives ABC Easy Fast Break on Profit," *The New York Times*, January 31, 1992, p. 12.

<sup>18/</sup> In 1989, for example, national MLB regular season coverage consisted of approximately 32 games on NBC, each with approximately 54 commercial units -- a total commercial inventory of under 2,000 units. Under the MLB's current agreements with CBS and ESPN, running from 1990 through 1993, nationally televised baseball MLB carries a total of approximately 10,000 commercial units during each regular season -- 960 units on CBS and roughly 9,000 units on ESPN.

traditional sports advertisers have finite budgets, the proliferation of commercial inventory reduces the advertising support for broadcast sports.<sup>19/</sup>

The net effect is an ongoing diminution in the capacity of broadcasters to bid for sports rights against cable networks, which are inhibited only by political considerations from more vigorously pursuing national, as well as local, events. As TCI President John Malone put it, "What the cable industry can do and how it does it is largely a function of what the Government permits it to do."<sup>20/</sup>

Thus, migration occurs for the most part in discreet increments as the cable industry circumspectly chips away at broadcasting's sports programming base, tiptoeing past Congress while claiming all the while that the shifted programming has not been shepherded away by cable operators but rather has been "abandoned" by broadcasters

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<sup>19/</sup> See, e.g., Stogel, Chuck, "Hold That Line!" Mediaweek, June 15, 1992, pp. 16-30; "Sports Marketing: Baseball's Season to Forget," Adweek's Marketing Week, October 21, 1991, p. 34.

<sup>20/</sup> Davis, L.J., "Cable Television; Television's Real-Life Cable Baron," The New York Times, December 2, 1990, Sec. 6, Part 2, p. 2.

unwilling to pay for it.<sup>21/</sup> In this spirit of incrementalism, HBO has just announced that it wishes to purchase a package of five or six regular season NFL games for future seasons to supplement existing cable coverage,<sup>22/</sup> while others contemplate a pay-per-view future for the daytime MLB League Championship games.<sup>23/</sup>

The proliferation of sports on cable may, in the short run, represent an increase in choices for the consumer. But if that has the effect over time of jeopardizing sports on broadcast television, the impact upon most consumers will be very negative.

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21/ For example, a 1989 study commissioned by the National Cable Television Association stated that "[c]able national and regional sports networks offer coverage of major sporting events which have either never been available on broadcast television or which have been abandoned by the broadcasters." The study concluded that ESPN's package of NFL games comprises games "abandoned by the networks." According to the study "[t]he slight reduction of network NFL broadcasts was attributed to lagging ratings and advertising revenue, and was also the result of overloaded fall sports schedules." "Sports on Cable: Playing What the Networks Don't," Broadcasting, January 1, 1990, p. 80. See also Comments of Time Warner Entertainment in this proceeding.

22/ "HBO Plans Push For NFL Package," Multichannel News, February 1, 1993, p. 2.

23/ "Baseball Playoffs Moving to Pay?" Broadcasting, February 10, 1992, p. 8.

Fundamental regulatory reforms would permit broadcasters to resist sports programming migration more effectively.

Unfortunately for those sports fans who are not able to divert hundreds of dollars each year into subscription fees, broadcasting has been required to face the daunting challenge posed by cable while hobbled with regulations that keep broadcasting from achieving its true competitive potential.

A crucial handicap that has been imposed by law on broadcasting may soon be lifted by full implementation of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). Until October 6, 1993, cable systems will continue to have the right to

retransmit broadcast stations at will without any

If properly implemented, the retransmission consent provisions of the Cable Act of 1992 could help to correct

hobbled broadcasting, preventing it from achieving scale efficiencies and exploiting the full value of the service it provides.<sup>24/</sup>

Suffice it to say that sports is a vital part of a broadcaster's overall program service. The coverage of major sports events gives a network visibility and greatly enhances the network's value to its affiliates. It also provides both networks and stations with valuable opportunities to promote other parts of their programming. For example, the MLB's League Championship and World Series games or Summer Olympics Games can serve as important promotional vehicles for familiarizing viewers with a network's entire fall schedule. The time period immediately following the Super Bowl or an NFL playoff game provides an incomparable opportunity to introduce a new entertainment program to a network's schedule. Important regular-season games can also provide valuable promotion opportunities.

But the economic value of sports events as promotional vehicles is directly linked to the value that the network or station is capable of realizing overall from the

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<sup>24/</sup> See generally Comments of CBS Inc. in In the Matter of Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 81-221, November 21, 1981.

service it provides. Any regulation that artificially depresses that value diminishes the amount that broadcast networks can afford to bid for major sports events. In this way, as in many other ways, all such regulation works against the interest of those viewers who cannot afford cable.

In the end, public access to free televised sports coverage depends on the continuing commitment of the leagues.

Even if all unnecessary regulatory impediments to broadcasting were removed, the economic might of subscriber-supported cable would threaten to overwhelm broadcasting's ability to remain in the sports business. For that reason, the availability of major sports programming on free television cannot be preserved without the commitment of the leagues themselves. Indeed, it is the leagues' commitment to the public interest that has allowed broadcasting, even before retransmission consent and other possible regulatory relief, to continue to offer a very substantial schedule of the best sports events.

The leagues have recognized that their antitrust

~~agreements and the large public works expenditures that~~

Markey put it -- to allow all segments of the public to share in the incomparable fun and excitement of a national sports event.

There are those who believe that the sums that could be amassed by offering championship games on a pay-per-view basis would far exceed the advertising revenues that broadcasts of such championship games would generate.<sup>25/</sup> For example, if only half of the Super Bowl's usual audience subscribed to the game for a pay-per-view fee of \$20 per household, the resulting 20 million subscriptions would generate \$400 million.

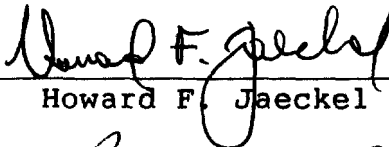
~~Thus it should be recognized as a significant~~

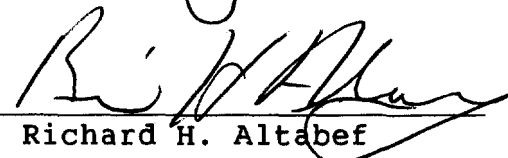
Although we believe that the sports leagues, college conferences and other grantors of sports rights are in the best position to provide most of the data described in the Commission's Notice of Inquiry, we are attaching general information regarding CBS Sports coverage of the NFL, MLB, NBA, College Basketball and College Football since 1980.

We hope that Congress and the Commission will continue to monitor this vital issue closely, and would be pleased to provide any additional help that we can.

Respectfully submitted,

CBS INC.

By   
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April 9, 1993

Its Attorneys

APPENDIX A

NATIONAL FOOTBALL LEAGUE